

**THE HUMANE SOCIETY OF THE UNITED  
STATES and SOUND RIVERS, INC.,**  
Plaintiffs,

*vs.*

**THE HANOR COMPANY OF WISCONSIN,  
LLC,**  
Defendant.

**PLAINTIFFS EXHIBIT B**

to their Complaint for Declaratory and Injunctive Relief and Civil Penalties

January 16, 2015 letter Re: Supplemental Notice of Intent to Sue for Violations of the  
Emergency Planning and Community Right-to-Know Act

January 16, 2015

*Via Certified Mail – Return Receipt Requested*

The Hanor Company of Wisconsin  
E 4614 Highway 14-60  
Spring Green, Wisconsin 53588

Registered Agent  
National Corporate Research, LTD.  
176 Mine Lake Court, Suite 100  
Raleigh, North Carolina 27615

**RE: Supplemental Notice of Intent to Sue for Violations of the  
Emergency Planning and Community Right-to-Know Act**

This firm represents the Humane Society of the United States (HSUS) and the Pamlico-Tar River Foundation (PTRF).

PTRF hereby provides notice and HSUS hereby provides supplemental notice of their intent to file a citizen suit against the Hanor Company of Wisconsin, LLC (Hanor) for ongoing and consistent daily violations of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11001 *et seq.* (supplemental notice letter). This supplemental notice letter relates to releases of ammonia gas from the Shellbank Farm (Shellbank), a large industrial swine production facility that is owned or otherwise operated by Hanor. Specifically, Shellbank has in the past released and continues to release in excess of 100 pounds of ammonia gas into the air per day without adequately reporting those releases to potentially impacted states and communities in accordance with section 304 of EPCRA, 42 U.S.C. § 11004. Hanor knew or reasonably should have known the daily volume of ammonia produced by this facility upon the facility achieving full operational and waste management capacities or at least as of January 2009.

Ammonia is an extremely hazardous substance.<sup>1</sup> Human exposure to ammonia, which is listed as a “chemical[] of concern” because of its “acute lethality, high production volume and known risks,” can result in impairments ranging from respiratory distress to death.<sup>2</sup> Failure to adequately report the release of any extremely hazardous substance above the substance’s critical reportable quantity violates the emergency release reporting requirements of EPCRA while putting both communities and the environment at risk.<sup>3</sup> This supplemental notice letter is provided pursuant to section 326 of EPCRA.<sup>4</sup>

<sup>1</sup> 40 C.F.R. § 355, App. A.

<sup>2</sup> 40 C.F.R. § 355, App. A, Note f.; National Research Council, Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs, 66 (2003) [hereinafter *NRC Report*], available at <http://www.nap.edu/catalog/10586.html>.

<sup>3</sup> 42 U.S.C. § 11004; 40 C.F.R. §§ 355.1 - 355, App. A.

<sup>4</sup> 42 U.S.C. § 11046; *see also* 40 C.F.R. §§ 374.1-374.6.

## **I. The Original Notice**

On July 10, 2012, the HSUS provided notification to Hanor regarding ongoing and consistent violations of section 304 of EPCRA relating to releases of in excess of 100 pounds of ammonia gas per day into the air and surrounding environment from its Shellbank facility. *See* App. A (HSUS July 10, 2012 Notice Letter to Hanor). Today's supplemental notice letter fully incorporates by reference all allegations and claims contained in the original letter, and supplements the original notification by confirming that the violations have been ongoing and consistent up to the date of this letter and adding an additional notifying party, PTRF.

## **II. Continuation of Violations and Identification of Persons Giving Notice**

### **a. Continuation of Violations at Shellbank**

Upon information and belief, as of the date of this supplemental notice letter, Hanor continues to release in excess of 100 pounds of ammonia per day from its Shellbank facility, and is in violation of section 304 of EPCRA for its failure to adequately report those releases pursuant to federal emergency release notification requirements.<sup>5</sup> Shellbank is a large concentrated swine feeding operation<sup>6</sup> that confines an estimated population of 2150 farrow-to-feeder swine and 6400 feeder-to-finish swine, and utilizes an open animal waste treatment and storage impoundment system.<sup>7</sup> Shellbank is located in Edgecombe County at 7111 NC 97W, Battleboro, North Carolina, 27809, just outside of the historic City of Rocky Mount.<sup>8</sup>

Shellbank produces approximately 14,233,950 gallons of liquid waste per year. An accepted, straightforward, and commonly available ammonia estimating methodology for industrial animal production facilities approximates that Shellbank regularly emits greater than 100 pounds of the extremely hazardous substance ammonia into the air every day, with high-end projections estimating Shellbank's releases at over 600 pounds of ammonia per day – six times ammonia's daily reporting threshold.<sup>9</sup>

Upon information and belief, at no time before or since receiving the July 10, 2012 notice letter has Hanor adequately reported the releases of ammonia from Shellbank to the relevant local emergency planning committee (LEPC) and state emergency response committee (SERC), pursuant to the requirements of EPCRA, and the releases have not been abated such that emergency release notification is no longer required. Since at least January 2009, Hanor knew or reasonably should have known that Shellbank's ammonia emissions exceeded the threshold for reporting pursuant to EPCRA. This knowledge is evidenced, in part, by Hanor's affiliations with the National Pork Producers Council and other industry trade groups that have made available to the pork industry EPCRA reporting information and ammonia estimating methodologies; Hanor's knowledge regarding industrial swine production; Hanor's obligation to comply with all relevant laws; prior notification from the HSUS regarding EPCRA violations at this facility; and Hanor's access to accepted ammonia estimating methodologies and other air pollutant measurement methods for industrial swine production facilities.

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<sup>5</sup> *See* 42 U.S.C. § 11004; § 11045; § 11046(1)(A)(i); *see also* App. A (HSUS July 10, 2012 Notice Letter to Hanor).

<sup>6</sup> *See* 40 C.F.R. § 355.31(g)(4).

<sup>7</sup> *See* App. A, 8 (HSUS July 10, 2012 Notice Letter to Hanor).

<sup>8</sup> *Id.*

<sup>9</sup> *See* R. Koelsch and R. Stowell, Ammonia Emissions Estimator (Feb. 23, 2009), [http://water.unl.edu/c/document\\_library/get\\_file?folderId=67759&name=DLFE-4647.pdf](http://water.unl.edu/c/document_library/get_file?folderId=67759&name=DLFE-4647.pdf); *see also* National Pork Producers Council, CERCLA-EPCRA Reporting Worksheet (Jan. 2009), *available at* <http://www.nppc.org/wp-content/uploads/Swine-EPCRA-Letter-Report-Worksheet.pdf>.

**b. Identification of Persons Giving Notice and Counsel**

**i. Persons Giving Notice**

The Humane Society  
of the United States  
2100 L Street, N.W.  
Washington, D.C. 20037  
(202) 676-2354

Pamlico-Tar River Foundation  
108 Gladden Street  
P.O. Box 1854  
Washington, NC 27889  
(252) 946-7211

**ii. Counsel**

James L. Conner II  
Calhoun, Bhella & Sechrest, LLP  
4819 Emperor Blvd., Suite 400  
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(919) 887-2607

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Daniel C. Snyder  
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941 Lawrence St.  
Eugene, OR 97405  
(541) 344-3505

**III. Conclusion**

EPCRA was enacted in 1987 to complement the federal Comprehensive Environmental Response, Compensation and Liability Act by providing communities and the public with the immediate right of access to fundamental information about releases of hazardous pollutants into their homes, schools, churches, and the environment.<sup>10</sup> Indeed, EPCRA is intended to “help increase the public’s knowledge and

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<sup>10</sup> See H.R. Conf. Rep. No. 99-962 (1986), *reprinted in* 1986 U.S.C.C.A.N. 3276, 3374 (“The Senate amendment and House amendment both establish programs to provide the public with important information on the hazardous chemicals in their communities, and to establish emergency planning and notification requirements which would protect the public in the event of a release of hazardous chemicals.”).

access to information on chemicals [and hazardous pollutants] at individual facilities, their uses, and releases into the environment,” and to provide a mechanism to mitigate and otherwise protect communities from the hazardous and sometimes toxic effects of pollutants on their populations and the environment.<sup>11</sup> In the event a party fails to comply with the requirements of EPCRA, including the requirements of section 304, that party may be liable for civil and administrative penalties that can be as high as \$37,500 per day (for each day of the first violation) to upwards of \$107,500 per day (for each day of any subsequent violations).<sup>12</sup> In addition, any person who “knowingly and willfully fails to provide notice in accordance with” EPCRA section 304 may be liable for criminal charges of up to two years in prison and additional monetary penalties.<sup>13</sup>

EPCRA section 326 provides the right for private parties,<sup>14</sup> such as the HSUS and PTRF, to file civil actions in federal court to enforce EPCRA’s statutory provisions and reporting requirements.<sup>15</sup> The HSUS and PTRF hereby provide supplemental notice of their intent to file such a citizen suit against Hanor for ongoing and consistent violations of EPCRA section 304 at the Shellbank facility since at least January 2009, as described above. If you have any questions regarding this notice, believe any of the statements in this notice letter to be in error, or wish to discuss a possible resolution of this matter, please contact me. Alternatively, you may contact Hannah Connor, in-house counsel for HSUS, at (202) 676-2354 or [hconnor@humanesociety.org](mailto:hconnor@humanesociety.org).

Sincerely,

CALHOUN, BHELLA & SECHREST, LLP

A black rectangular box redacting the signature of James L. Conner II.

[signature redacted]

James L. Conner II

cc: (ON NEXT PAGE)

<sup>11</sup> U.S. Env. Protection Agency (EPA), *The Emergency Planning and Community Right-to-Know Act: Fact Sheet*, EPA 550-F-00-004 (Mar. 2000).

<sup>12</sup> See 42 U.S.C. § 11045(b)(1)-(3); 40 CFR § 19.4, Table 1.

<sup>13</sup> See 42 U.S.C. § 11045(b)(4).

<sup>14</sup> A “citizen” is “any person,” including any “individual, trust, ... [or] corporation.” 42 U.S.C. § 11046(a)(1); 42 U.S.C. § 11049(7).

<sup>15</sup> See 42 U.S.C. § 11046.

The Hanor Company of Wisconsin  
National Corporate Research, LTD., Registered Agent  
January 16, 2015  
Page 5

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Pamlico-Tar River Foundation  
108 Gladden Street  
P.O. Box 1854  
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